

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

KRYSTOPHER ANTONIO MYERS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-08-636-D
)	
TIMOTHY BIRD, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

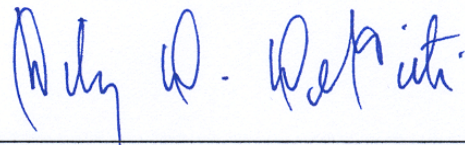
This matter is before the Court for review of the Report and Recommendation issued April 6, 2009, by United States Magistrate Judge Doyle W. Argo pursuant to 28 U.S.C. § 636(b)(1)(B)-(C). Judge Argo recommends a dismissal without prejudice pursuant to Fed. R. Civ. P. 4(m) of Plaintiff's action against Defendants Timothy Bird and Officer Hultman due to the lack of service of process.

A review of the case file reflects that Plaintiff has neither filed a timely objection to the Report nor requested additional time to object, even though he was informed of the deadline and the manner for filing an objection and the consequence of failing to object. The Court notes that Plaintiff previously failed to object to an earlier Report and Recommendation that, when adopted by the Court, disposed of his claims against Defendants Oklahoma County Detention Center and Sheriff John Whetsel. In this instance, however, it appears that Plaintiff's lack of objection may be due to a lack of notice. Recent mailings to Plaintiff's address of record at the county jail have been returned as undeliverable; each of the returned envelopes bears a handwritten notation, "Gone 3-3-09." The Court finds that any failure to receive a copy of the April 6 Report does not provide a basis for an exception to the court of appeals' "firm waiver rule" because Plaintiff was responsible for giving notice of any change of address. *See Theede v. United States Dep't of Labor*, 172 F.3d

1262, 1267-68 (10th Cir. 1999) (*pro se* plaintiff who failed to provide any change of address or address correction waived right to review by failing to make a timely objection); *see also* W.D. Okla. R. LCvR5.4(a) (requiring written notice of a change of address). Therefore, the Court finds that Plaintiff has waived further review of the issues addressed in the Report. Further, for the reasons stated by Judge Argo in his April 6 Report, the Court finds that an extension of time to effect service of process is unwarranted under the circumstances and a dismissal under Rule 4(m) is appropriate.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 25] is ADOPTED in its entirety. Plaintiff's action against Defendants Timothy Bird and Officer Hultman is DISMISSED without prejudice pursuant to Rule 4(m). Because no other claims remain pending, a separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 29th day of April, 2009.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE